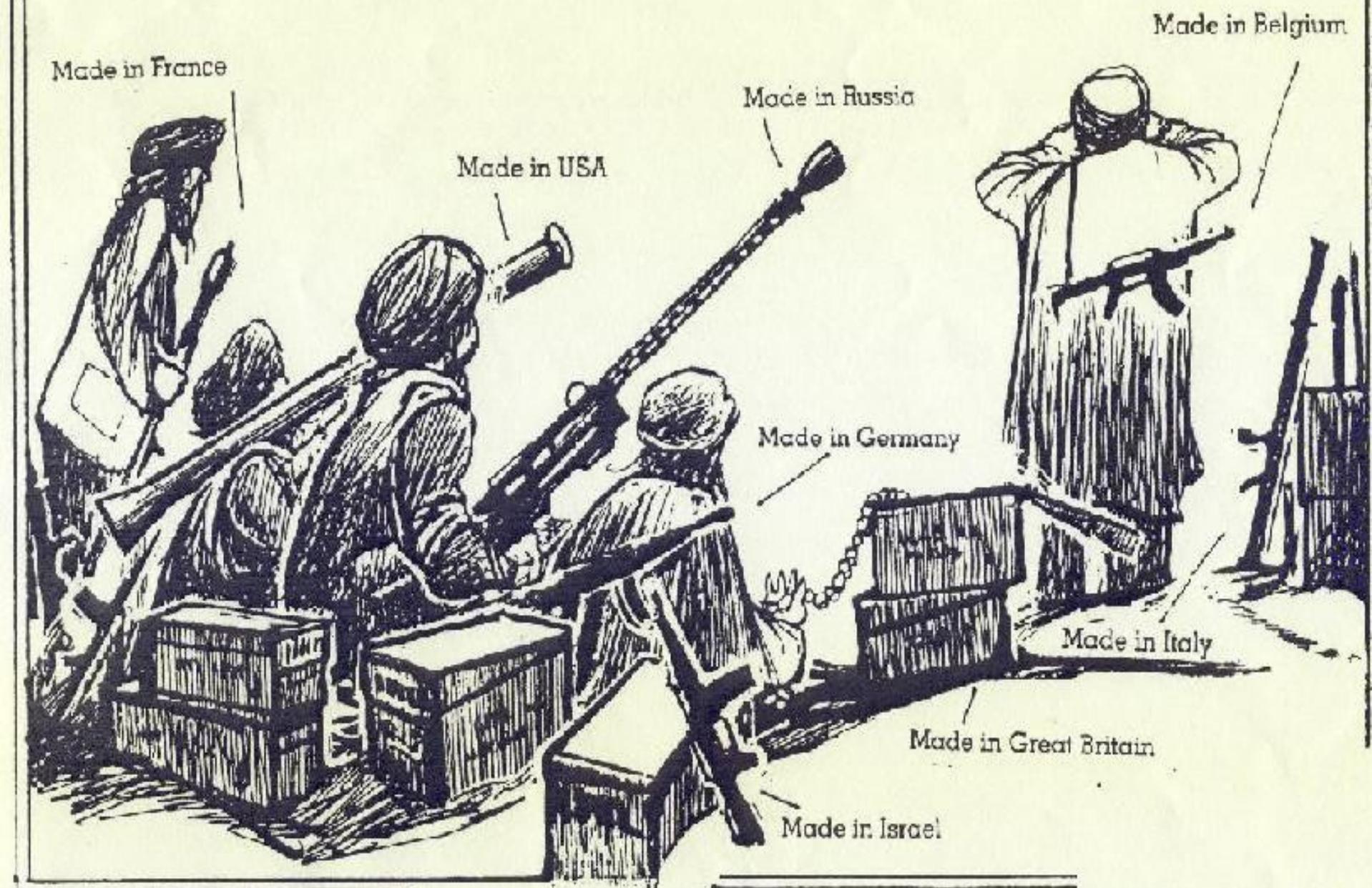




# ***Technology Transfer and Export Controls SAM-C***

# Taliban Forces Await the Alliance Attack



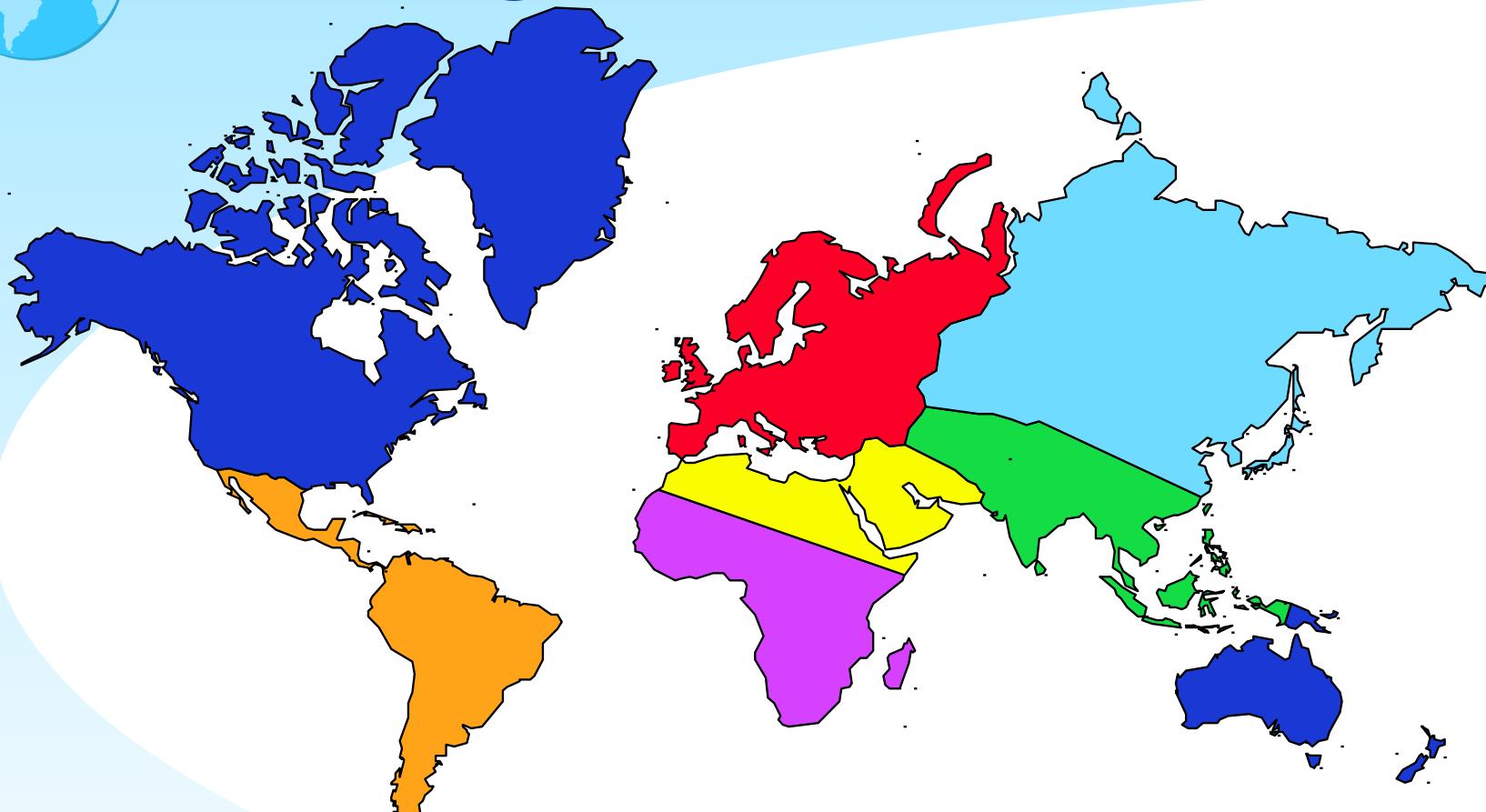


# Overview

- **Technology Transfer & Export Controls (Introduction)**
- **Controlled Unclassified Information**
- **Foreign Disclosure and the National Disclosure Policy (NDP)**
- **Security Agreements**
- **Export Approval/License Process**



# Regional Breakdown of Foreign Collection in 2002



█ South America (4%)

█ Other (5%)

█ Europe (20%)

█ Middle East/North Africa (24%)

█ Sub-Saharan Africa (1%)

█ North Asia (24%)

█ South Asia (19%)

█ Unknown (3%)



# *Reasons for Technology Transfer/Export Control*

- **National Security**
- **Foreign Policy**
- **Weapons of Mass Destruction**
- **Terrorism**



# *Protection of Critical Information*

**“As we remain fully engaged in the war on global terrorism, protection of critical information and our intentions is essential to preserving the lives of the men and women involved in those operations, and to the success of the operations themselves.”\***

\*Deputy Defense Sec Paul Wolfowitz, 6 June 2003



# **International Program**

An **international program** is

- **Lawful and authorized**
- **Government or commercial effort with contributing or receiving foreign participant**
- **Information or technology is transferred from one country to another**



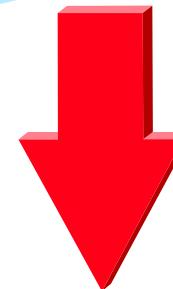
# *International Program Security*

- **Total effort that safeguards information/technology identified as requiring control**
- **Generated by, provided to, or transferred in an international program**



# What is Technology?

Here





# Technical Data

- **Information relating to defense articles or defense services and required for**
  - operation**
  - repair**
  - testing**
  - maintenance**
  - modification**
  - design**
  - development**
  - production**
  - manufacture**
  - assembly**
- **Includes blueprints, drawings, photographs, plans, instructions, and documentation**
- **Software as defined in U.S. Munitions List**
- **Does not include basic marketing info on function, purpose or general descriptions of defense articles**



# *DoD Policy on Technology*

- **A valuable, limited national security resource**
- **Protected and invested in pursuit of national security objectives**
- **International trade is key to strong U.S. industrial base**
- **Export controls in way to minimally interfere with legitimate trade**



# **Technology Transfer Mechanisms In Open Society**

- **Commercial and government sales**
- **Scientific, engineering, and academic exchanges**
- **Licensing and other data exchange agreements**
- **Co-development and co-production agreements**
- **Foreign technical missions**
- **International meetings/symposia**
- **Freedom Of Information Act (FOIA)**
- **International visits**
- **Clandestine or illegal acquisition of military/dual-use technology/products**



# Government and Commercial Programs and Authorities

## Programs

- Security Assistance
- Cooperative Research and Development
- Foreign Contracting
- Direct Commercial Sales
- Direct Technical Assistance/Training
- Licensed Production

## Authority

- Arms Export Control Act (AECA)
  - International Traffic in Arms Regulation (ITAR)
  - Munitions List (ML)
- Export Administration Act (EAA)
  - Export Administration Regulation (EAR)
  - Commerce Control List (CCL)



# *Key Players in Tech Transfer and International Program Security*

## Arms Export Control Act (AECA)

Dept. of State

Direct. of Defense Trade Controls (DDTC)

ITAR

Munitions List (ML)

Undersecretary (Acq Tec & Log)

## Export Administration Act (EAA)

Dept. of Defense

Dept. of Commerce

Bureau of Industry and Security (BIS)

EAR, Commerce Control List (CCL), Country List

Undersecretary (Policy)

Undersecretary (Intelligence)



# **U.S. Government Agencies**

- **Department of Commerce:** Dual-use and nonmilitary
- **Department of State:** Military
- **Department of Defense:** Review agency
  - **Defense Technology Security Administration (DTSA)**



# **Militarily Critical Technologies List (MCTL)**

- **Required by *Export Administration Act of 1979***
- **Prepared by OUSD (AT&L)**
- **Identifies critical technologies that**
  - **Negate/impair U.S. military capability**
  - **Significantly advance a critical military mission area of a potential adversary**
- **Guides, not controls, export release decisions**



# *Technology Transfer Decision Basis*

- **2 Fundamental security considerations**
- **3 Documents forming the legal and policy basis**
- **3 Conditions that must be agreed upon by foreign recipients**
- **2 Activities associated with International Programs**



# ***Fundamental Security Considerations***

## **Access**

**Sharing of US defense articles or information is in the best interests of the US**

## **Protection**

**Will be equivalent to that provided by the US**

**2**



# *Legal and Policy Basis*

**Arms Export Control Act (AECA)**

**Executive Order 12958**



**National Security Decision  
Memorandum (NSDM) 119**

**3**



# Arms Export Control Act (AECA)

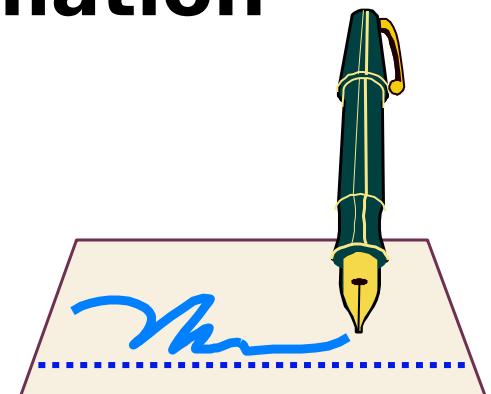
- **Forms the legal basis for the security requirements of most DoD International Programs**
- **Governs export of defense articles and services**
- **Covers commercial and government programs**
- **Implemented by ITAR (State Dept) which contains US Munitions List (USML)**



# *Executive Order 12958*

## **As Amended 25 March 2003**

- Establishes the National Security Information Program
- Uniform system for...
  - Classifying
  - Safeguarding
  - Declassifying
- Protection of Foreign Information
- DoD 5200.1-R





# *National Security Decision Memorandum (NSDM) 119*

- **Governs decisions on foreign disclosure of Classified Military Information (CMI)**
- **Assigns implementation of NDP to Secretaries of State and Defense**
- **Establishes the NDP Committee (NDPC)**
- **Requires annual report to National Security Council (NSC)**



# Security Conditions

- **No transfer of title or possession w/o US consent**
- **No use for other purposes without USG consent**
- **Recipient provides substantially the same degree of protection**

3



# *Government to Government Principle*

**Two activities :**

- **Disclosure/Export decisions**
- **Transfers of classified information and material**

2

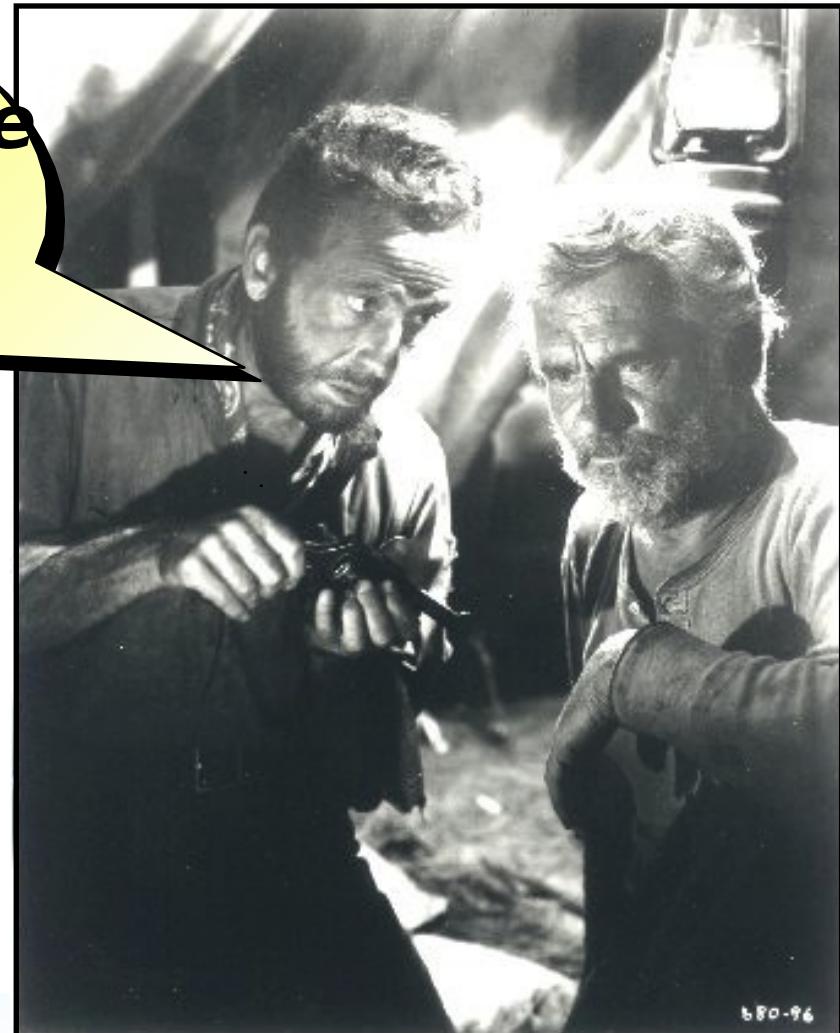


# *Controlled Unclassified Information (CUI)*



# Public Domain or Open Source Information

***Is unclassified  
information the same  
as public domain or  
open source  
information?***





# **Controlled Unclassified Information (CUI)**

- **Unclassified information to which access or distribution limitations have been applied**
- **Or official government information that is unclassified, but has been determined by designated officials to be exempt from public disclosure under the *Freedom of Information Act* (5 USC § 552)**



# **Freedom Of Information Act 5 USC § 552**

- **Openness in government**
- **Any person can request information from agency files**
- **Unless the record or part of the record is exempt from disclosure**
  - ***DoD Directive 5400.7 - DoD Freedom of Information Act Program* implements FOIA with DoD, and**
  - **Provides guidance For Official Use Only (FOUO) markings**
  - **Official U.S. Government unclassified information must be reviewed prior to release**



# **Nine FOIA Exemptions**

- 1. Classified information pursuant to *Executive Order 12958*, or prior orders.**
- 2. Internal rules and practices of a government agency.**
- 3. Specifically exempted by statute to include export controlled technical data.**
- 4. Trade secrets and commercial and financial information.**
- 5. Inter-agency and intra-agency memoranda.**
- 6. Information release invasion of personal privacy.**
- 7. Investigative records related to law enforcement.**
- 8. Reports prepared for the regulation or supervision of financial institutions.**
- 9. Geological and geophysical information concerning wells.**



# ***FOIA Exemption # 3 Secretary of Defense Authority***

- **Public Law 98-94 (10 USC § 130)** provides the **Secretary of Defense** with the authority to withhold from the public:
  - **Unclassified critical technical data**
  - **With military or space application**
  - **In the possession of, or under the control of a DoD**



# ***Handling For Official Use Only (FOUO)***

- **Marking - FOUO**
- **Controlled - In a manner sufficient to ensure unauthorized persons do not gain access**
- **Access - Must be reviewed before release and must get consent of the originator**
- **Transmittal - Encrypted, secure voice and FAX, may be sent via first-class mail or parcel post**



# *Foreign Disclosure and the National Disclosure*



# National Disclosure Policy Classified Military Information (CMI)

## **CMI is information:**

- **Requiring protection in interest of national security as described in Executive Order 12958**
- **Under control or jurisdiction of DoD or its departments/agencies**



# **National Disclosure Policy Classified Military Information (CMI)**

## **CMI authority is:**

- **Arms Export Control Act**
- **Executive Order 12958  
(Classified National Security  
Information)**
- **National Security Decision  
Memorandum (NSDM-119)**



# *National Disclosure Policy (NDP)*

## **Framework for NDP:**

- AECA
- EO 12958
- NSDM-119



## **Documents that implement NDP:**

- National Disclosure Policy (NDP-1)
- DoDD 5230.11



# **DoDD 5230.11 Disclosure of Classified Military Information**

- **Latest disclosure guidance**
- **Recognizes CMI as a national security asset**
- **Disclosure authority approves release**
- **Technology Assessment/Control Plan (TA/CP) used as basis for weapon system release**



# **National Security Decision Memorandum- 119**

- **Governs decisions on foreign disclosure of classified military information**
- **Assigns implementation of NDP to Secretaries of State and Defense**
  - **Other US Government departments and agencies when appropriate**
- **Establishment of mechanism for effective implementation of policy**
  - **Develop information for General Security Agreements (GSA)**
  - **Conduct periodic on-site surveys**



# Security Survey

- Purpose - Enables the NDPC to determine by physical on-site review, whether a particular foreign government has the capability to protect CMI substantially the same as the United States
  - Provides for the exchange of information
  - Reviews foreign governments security laws and regulations
  - U.S. Embassy views also obtained



# Security Survey

- **Evaluates foreign government and industry**
  - **Personnel security**
  - **Information control**
  - **Physical security**
- **Results in negotiated security agreements**





# **General Security Agreements**

- **General Security Agreement (GSA)**
- **General Security Of Information  
Agreement (GSOIA)**
- **General Security Of Military  
Information Agreement (GSOMIA)**



# **General Security Agreements**

- Negotiated via diplomatic channels
- Affords classified material substantially the same degree of security **protection** as the releasing government would provide to its own classified information.
- Provides for **use** limitations
- Restricts **third party transfers** and protects proprietary rights
- Provides for reporting losses or compromises
- Commits to protect any classified information released to a third party



# General Security Agreements

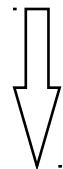
**FMS  
Sale**



**1. LOA**

**2. MOU/  
MOA**

**Commercial  
Sale**

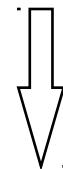


**1. End-Use-  
Certificate**

**2. Exchange  
of Notes**

**3. MOU/  
MOA**

**Cooperative  
Program**



**1. MOU/MOA**

**2. Standard  
Clauses**

**Foreign  
Contracting**



**1. Contract  
Clauses**

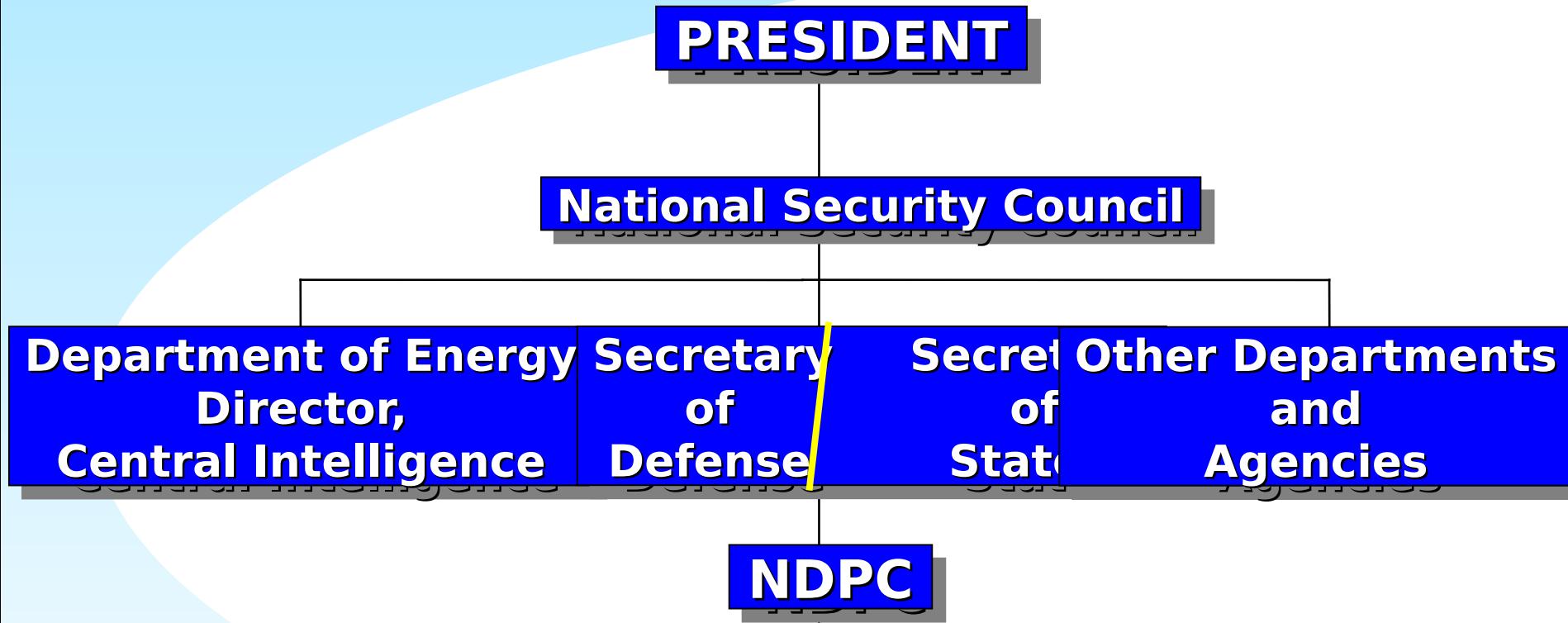


# *Industrial Security Agreements*

- **Negotiated by Under Secretary of Defense (Policy Support) as an annex to a GSA**
- **Used to enable foreign governments to enter into arrangements involving industrial participation e.g., reciprocal procurement agreements**
- **Director, Defense Security Service (DSS) administers and implements agreement**



# NATIONAL DISCLOSURE POLICY COMMITTEE (NDPC)



## General Members:

OSD Chairs Air

Force

State

JCS

Army  
Navy

## Special Members:

USD (P) DIA

USD(AT&L)

MDA

USD (I)

## Observers:

NSA

NASA



# NSDM-119 Basic Policy for CMI

- **Five disclosure criteria:**
  1. Supports U.S. foreign policy
  2. Not jeopardize U.S. Military security (damage assessment)
  3. Recipient's capability and intent to protect
  4. Benefit to the USG (POL/MIL/National Security)
  5. Release limited to that necessary to satisfy U.S. goals
- **Customer must have “Need to Know”**
- **Implemented by DoDD 5230.11,**  
***Disclosure of Classified Military Information***

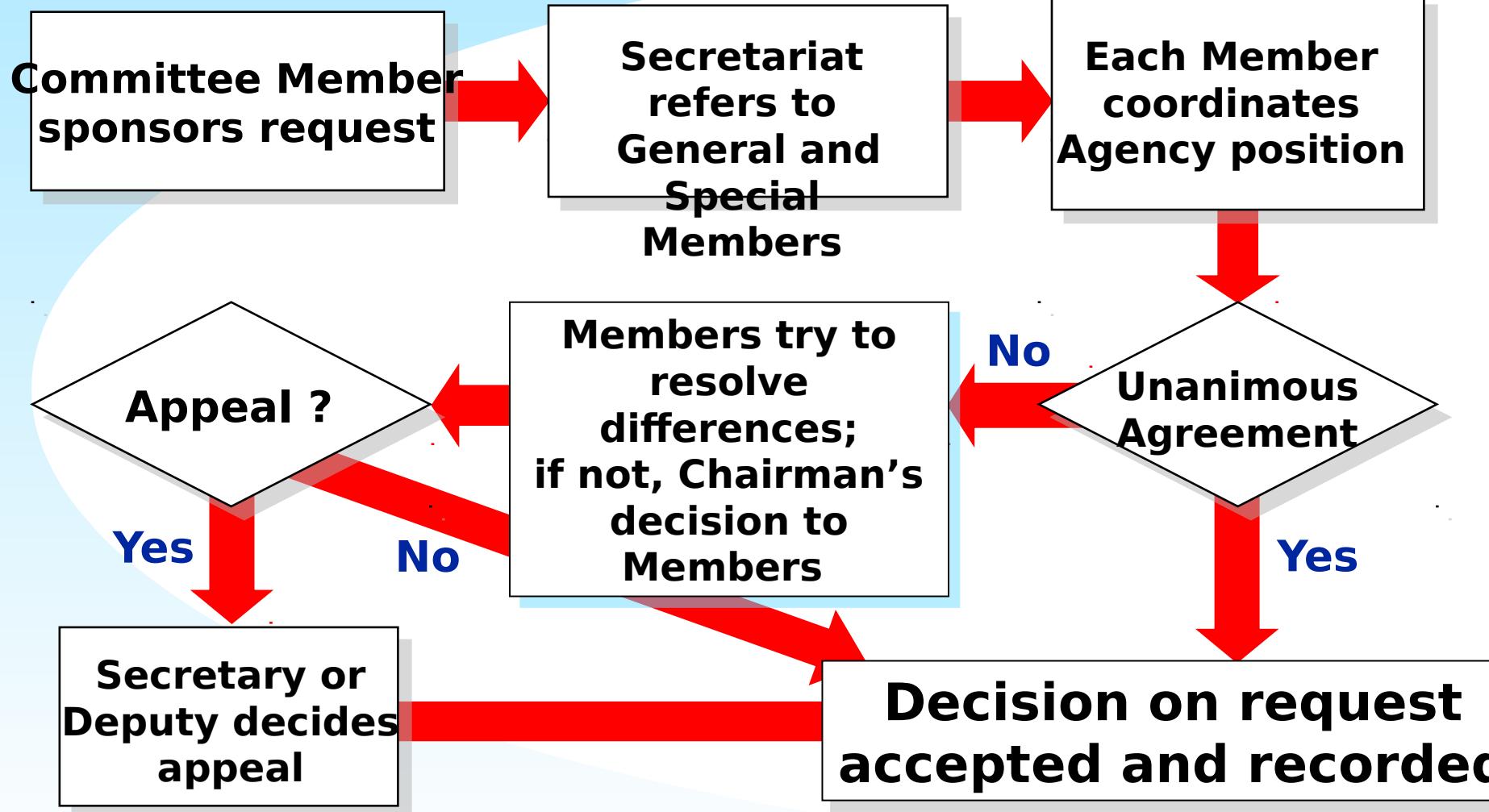


# Annex to National Disclosure Policy (NDP-1)

Country Charts		Country A	Country B	Country C
<b>Organization, training and employment of military forces</b>	<b>1</b>	<b>S</b>	<b>C</b>	
<b>Military materiel and munitions</b>	<b>2</b>	<b>S</b>	<b>C</b>	
<b>Applied research and development information and materiel</b>	<b>3</b>	<b>C</b>		
<b>Production information</b>	<b>4</b>	Disclosure of CMI requires an exception to NDP.		
<b>Combined military operations, planning and readiness</b>	<b>6</b>			
<b>U.S. order of battle</b>	<b>7</b>			
	<b>8</b>	<b>TS</b>	<b>S</b>	<b>X</b>



# *National Disclosure Policy Exception Process*





# **DODD 5230.11**

- **Delegation of Disclosure Authority Letter (DDL) used to provide disclosure guidance**
- **Classified Military Information shall be transmitted through government-to-government channels**
- **To avoid false impressions, National Disclosure Policy must authorize in advance**



# **DODD 5230.11**

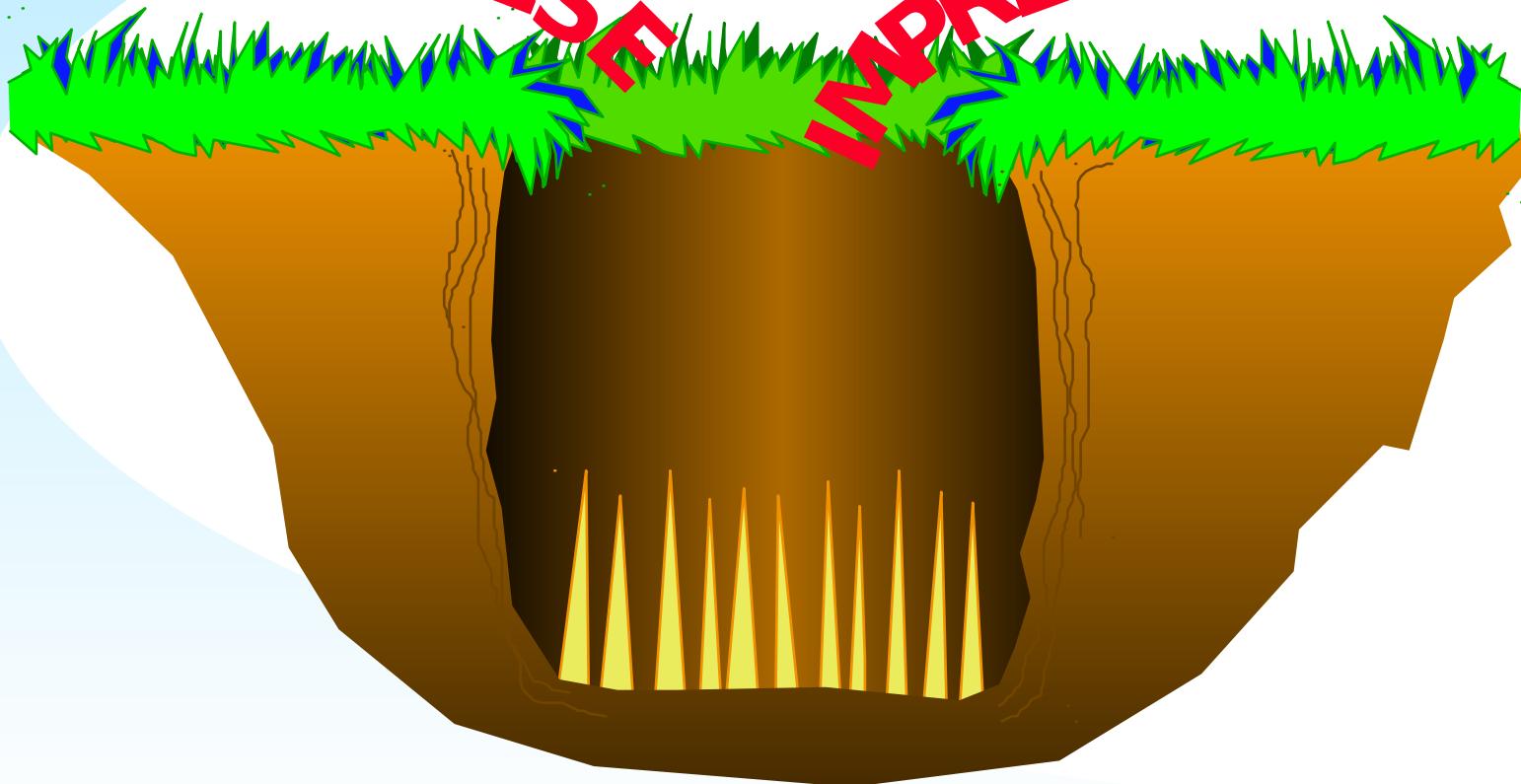
## **Disclosure Authority-**

- **Is an official, specifically designated in writing, who may disclose or deny CMI per NDP, provided:**
  - **The information is originated by the official's department or agency**
  - **The official is responsible for the information to be disclosed**
  - **Only those officials with such specific authority may make foreign disclosure determinations**



# Planning a Foreign Sale?

**AVOID  
FALSE  
IMPRESSIONS**





# False Impressions\*

- **Case-by-Case**
- **Disclosure decision must be based on classification level of all information which may be required for release if system is sold**
- **No release of weapon specific information or Price & Availability data until authority obtained to release highest level of CMI ultimately required**
- **U.S. policy - Avoid creating false impressions\***

\*NDP-



# **Export Approval/ License Process**



# Technology Transfer



1. U.S. ships Humdinger missiles to Bandaria



2. Bandaria exports it to Zastavia



3. Zastavia exports it to Akkadia



4. Akkadia sends it back to Bandaria



# What Is an Export\*?

- **Sending/taking defense articles out of U.S. in any way**
- **Transferring registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by U.S. Munitions List in U.S. or abroad**
- **Disclosing (including orally and visually) or transferring any defense article or technical data:**
  - **To embassy, agency or subdivision of a foreign government in U.S.**
  - ~~• To a foreign person in U.S. or abroad~~  
120.17

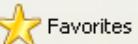


# ***Export Examples***

- **Foreign customer attending meetings where technical data are discussed**
- **Delivery of technical data to the U.S. representatives of a foreign country**
- **Can take many forms - oral, visual, written**
- **Can occur via discussion, fax, telephone call, plant tour, other ways**



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## Defense Trade Controls - Reference Library

### Regulations

#### International Traffic in Arms Regulations (ITAR)

- **22 CFR Parts 120-130 from the U.S. Government Printing Office, Revised as of April 1, 2002**

- [Part 120 -- Purpose and Definitions](#)
- [Part 121 -- The United States Munitions List](#)
- [Part 122 -- Registration of Manufacturers and Exporters](#)
- [Part 123 -- Licenses for the Export of Defense Articles](#)
- [Part 124 -- Agreements, Off-Shore Procurement and Other Defense Services](#)
- [Part 125 -- Licenses for the Export of Technical Data and Classified Defense Articles](#)
- [Part 126 -- General Policies and Provisions](#)
- [Part 127 -- Violations and Penalties](#)
- [Part 128 -- Administrative Procedures](#)
- [Part 129 -- Registration and Licensing of Brokers](#)
- [Part 130 -- Political Contributions, Fees and Commissions](#)

- **ITAR Amendments. The U.S. Government Printing Office publishes the ITAR in April as part of the Code of Federal Regulations. While every effort is made to keep the listing and text of ITAR amendments current at this site, please consult the Federal Register for the official record of amendments made after April 1, 2002.**

- [Part 126 -- Amendment: Afghanistan](#)
- [Parts 121 and 123 -- Amendment: Categories II, III, VII, XVI, and XVIII](#)
- [Part 121 -- Amendment: Category XV](#)

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# *The U.S. Munitions List*

# CATEGORY



# ***Export Forms and Applications for Licenses (Part 123.1)***

- **DSP-5** **Permanent export unclassified technical data or equipment**
- **DSP-61** **Temporary import of unclassified defense articles (in-transit)**
- **DSP-73** **Temporary export of unclassified defense articles**
- **DSP-83** **Non-transfer and Use Certificate**
- **DSP-85** **Permanent/Temporary Export/Import of classified articles/technical data**
- **DSP-94** **FMS shipments**
- **DS-2032** **Registration Form**

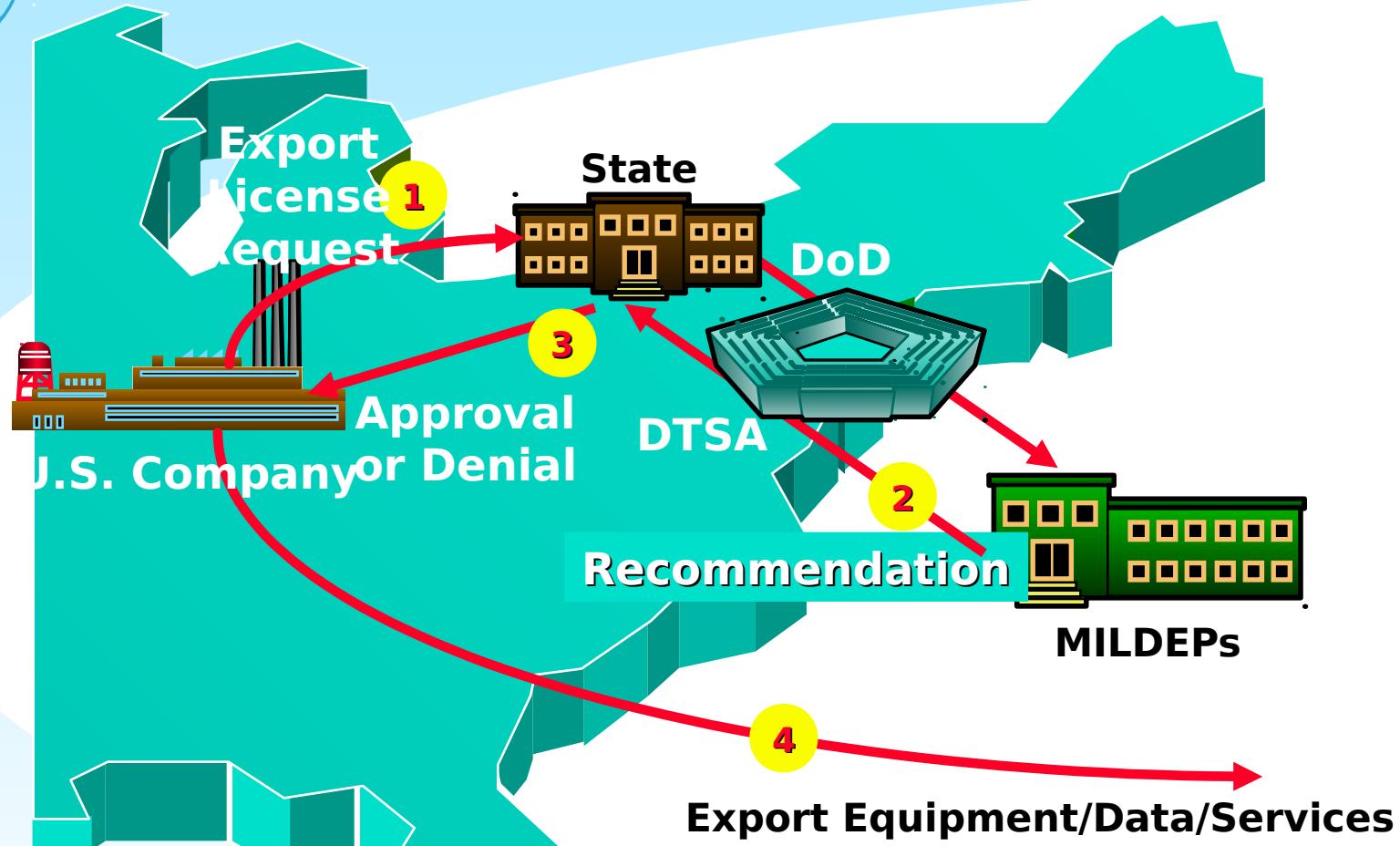


# **Foreign Military Sales (FMS) License Exemption (Part 126.6)**

- **Technical data sold, leased or loaned under DoD FMS program:**
  - Pursuant to a Letter of Offer and Acceptance (LOA)
  - Accompanied by a properly executed DSP-94
  - Exported from the US on a military aircraft or naval vessel of that government or via the Defense Transportation Service (DTS)



# Export License Review Process



**DoS** reviews/updates up to 50,000 export licenses per year; 20% of these go to DoD/DTSA



# How Do Violations Occur?

- **Marketing presentations containing defense technical data made to foreign governments or foreign companies without proper license/authorization**
- **Foreign national employees in the U.S. working on defense programs and given access to defense technical data without proper license/authorization**
- **International trade show displays not properly licensed**
- **Shipping errors**



# ***State Department ITAR Penalties***

- **Criminal: “Willful” violation:**
  - Up to \$1m per violation for corporations
  - Up to \$1m per violation and up to 10 years in jail for individuals
- **Civil: “Any” Violation:**
  - Up to \$500k per violation for corporations and/or individuals
- **Civil and Criminal:**
  - Seizure or forfeiture of goods
  - Debarment from licensing for as long as three years
  - Potential debarment from Government contracting for up to three years



# Summary

- **Technology Transfer & Export Controls (Introduction)**
- **Controlled Unclassified Information**
- **Foreign Disclosure and the National Disclosure Policy (NDP)**
- **Security Agreements**
- **Export Approval/License Process**



# ***Technology Transfer and Export Controls SAM-C***